

AMENDED IN SENATE JULY 16, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

**SENATE BILL**

**No. 78**

**Introduced by Senator Polanco**

May 17, 2001

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~~An act to add Section 7047 to the Business and Professions Code, to amend Section 815.1 of, and to add Sections 1075, 1221, and 1228.1 to, the Civil Code, to add Section 21080.28 to the Public Resources Code, to amend Sections 367, 368, 369, 377, 840, 841, 842, 843, 846, 846.2, 1731, and 9601 of, and to add Sections 451.1, 848, and 857 to, the Public Utilities Code, to amend Section 6016.5 of, and to add Section 6052 to, the Revenue and Taxation Code, and to amend Section 80002 of, and to add Division 28 (commencing with Section 81000) to, the Water Code, relating to energy, and making an appropriation therefor. An act to amend Sections 341.5, 359, and 379 of, to amend and repeal Section 367 of, to add Sections 365.1, 454.10, and 454.11 to, and to add Article 16 (commencing with Section 399.20) and Article 17 (commencing with Section 399.30) to Chapter 2.3 of Part 1 of Division 1 of, to repeal Section 361 of, to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, and to repeal and add Section 330 of, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as amended, Polanco. Electric Utility Rate Stabilization Act of 2001.

(1) Existing provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical

*corporations regulated by the Public Utilities Commission of uneconomic transition costs for a certain period of time, and requires the commission to establish a mechanism for recovery of these costs.*

*This bill would also provide for recovery by a specified electrical corporation of qualified costs, as defined, subject to verification and approval by the commission, if the corporation and its holding company enter into a specified binding and enforceable agreement with the state for performance of various requirements including, the sale to retail end-use customers of and the application of cost-based rates to all electricity produced by generation assets owned by the corporation, dedication of certain generation output to the state, conveyance of certain lands to the state, termination of actual or potential litigation, agreement to resume procurement of full electricity requirements for its service area as soon as it is deemed creditworthy or January 1, 2003, whichever is sooner, providing an irrevocable option to purchase transmission facilities, and application of a specified tax refund to reduction or elimination of debt. The bill would require the commission, until December 15, 2006, to approve an irrevocable financing order for the recovery by the electrical corporation of an electrical corporation debt repayment set-aside, in an amount not to exceed \$2,500,000,000 of qualified costs. The bill would require the electrical corporation repayment set-aside established pursuant to these provisions to be paid exclusively by customers with electric loads exceeding 125 kilowatt billing demand. The bill would enact various other related provisions in that regard, including authorizing the issuance of electricity market stabilization bonds by the electrical corporation secured by the set-aside and requiring the approval of the commission of those bonds. The bill would require the electrical corporation to apply the net proceeds from the sale of electricity market stabilization bonds to certain of the corporation's debts.*

*(2) Existing law requires the commission to identify certain generation-related costs of electrical corporations that are uneconomic under the restructuring of the electrical industry, and provides for recovery of those uneconomic costs by the corporations from customers in a specified manner.*

*This bill would provide that these and certain related provisions are repealed on January 1, 2002.*

*(3) The Public Utilities Act provides for the continued regulation by the commission of the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, but pursuant to Chapter*



2 of the 2001–02 First Extraordinary Session, also prohibits any disposal of a facility of this nature prior to January 1, 2006.

This bill would enact new provisions authorizing the commission to require an electrical corporation to make direct investments in generation facilities, and providing for the commission to approve rates sufficient to support that investment. The bill would prohibit the commission, on or before January 1, 2006, from reducing a specified electrical corporation’s authorized rate of return on generation assets below a certain level, if the electrical corporation has entered into the specified binding and enforceable agreement with the state described above in paragraph (1).

(4) Existing law provides that a violation of the Public Utilities Act is a crime.

This bill, by enacting new requirements relative to electrical corporations, would thereby impose a state-mandated local program.

(5) Existing law providing for the restructuring of the electrical industry provides for creation of a Power Exchange to provide an efficient competitive auction for power that meet the loads of all exchange customers at efficient prices.

This bill would repeal these provisions. The bill would make other changes to various electrical restructuring provisions and would add legislative findings in that regard.

(6) This bill would enact other related provisions.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) Existing law relating to contractors defines the term “contractor” and makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license, unless that person is particularly exempted from the provisions of that existing law.~~

~~This bill, except as specified, would exempt from those provisions an electrical corporation that is party to any agreement with the Department of Water Resources or other authorized state agency or~~

~~authority relating to transmission or other facilities acquired from an electrical corporation.~~

~~(2) Existing law provides for the voluntary conveyance of conservation easements to qualified nonprofit organizations, and defines the term “conservation easement” to mean any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.~~

~~This bill would define the term “conservation easement” to also mean any conveyance by an electrical corporation to a trust or other similar entity, formed for the benefit of the state or any state agency, of an easement or equivalent real property interest over, or affecting, any real property located in any county of this state, the terms of which restrict development of those lands in perpetuity or for a period not less than 50 years for purposes of ensuring the long-term conservation of that property for its public interest value. The bill would prohibit the easement or equivalent real property interest from being determined to fail to constitute and qualify as a conservation easement under specified circumstances relating to the use of the property.~~

~~(3) Existing law provides standards for the interpretation of grants and governs the recordation of transfers.~~

~~This bill would require, if any real property interest, as defined, held by an electrical corporation requires the consent of the grantor, as defined, for the electrical corporation’s transfer, as defined, of that real property interest, but provides no standard for the granting or withholding of that consent, the transfer consent requirement, in the case of the transfer of transmission assets by the electrical corporation to the Department of Water Resources or other authorized state agency or authority, to be construed to include an implied standard that the grantor’s consent may not be unreasonably withheld. The bill would impose certain requirements on the recordation of any instrument of conveyance that purports to transfer an interest to the department or any other authorized state agency or authority.~~

~~(4) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare and certify an environmental impact report on a project that it intends to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a~~

negative declaration if it finds that the project will not have that effect either as proposed or as mitigated.

This bill would exempt from that act any project primarily involving the disposition to the State of California, or any agency thereof, of all or any portion of the transmission system or other utility assets of a public utility electrical corporation, as well as the grant of easements and conveyances in fee to certain lands for conservation purposes, pursuant to a settlement agreement, as defined, as well as implementing agreements described in that settlement agreement, and any other actions contemplated by that settlement agreement.

(5) Provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical corporations of uneconomic costs during a transition period that began on January 1, 1998, and ends for an electrical corporation on the earlier of March 31, 2002, or the date that the electrical corporation fully recovers its uneconomic costs. Existing law imposes a rate freeze and a rate reduction during the transition period to remain in effect until March 31, 2002, unless the electrical corporation fully recovers its uneconomic costs at an earlier date. The electrical corporation is at risk for those costs not recovered during that time period. Existing law requires the Public Utilities Commission to establish an effective mechanism that ensures the recovery of transition costs.

This bill would exempt from that assignment of the risk of unrecovered costs an electrical corporation that has entered into a electrical rate settlement agreement, as described in (7), below. The bill would require the commission to establish an effective mechanism that ensures recovery of qualified costs. The bill would authorize the commission to establish rates that enable a public utility electrical corporation, to the extent that the public utility electrical corporation has entered into an electric rate settlement agreement, provided that the electrical corporation is not in default of that agreement, or the agreement has not been terminated by reason of the default by the electrical corporation, to recover costs incurred after January 1, 2001, associated with generation assets and obligations, on the terms of, and subject to, the conditions of the settlement agreement, even if those costs were incurred during periods during which the electrical corporation's rates were set by existing law.

The bill would prohibit the commission, if an electrical corporation is party to definitive agreements required to be entered into as part of an electric rate settlement agreement, and that electrical corporation is

~~not in material default under that settlement agreement, from reducing, before January 1, 2011, that electrical corporation's authorized return on equity below the return authorized by the decision or decisions of the commission governing authorized return on equity applicable to that electrical corporation as of the date of that electric rate settlement agreement or establishing a ratemaking capital structure for that electrical corporation with proportions of common equity, preferred equity, and long term indebtedness different than those authorized by the decision or decisions of the commission governing ratemaking capital structure of that electrical corporation as of the date of the electric rate settlement agreement, unless the commission determines that the establishment of a different ratemaking capital structure is necessary to maintain an investment grade credit rating for the electrical corporation.~~

~~(7) The Public Utilities Act provides for the issuance of rate reduction bonds in connection with the recovery of transition costs.~~

~~This bill would provide for the issuance of financing orders, until December 15, 2006, in connection with the recovery of qualified costs, including the net undercollected amount or other amount contemplated to be recovered by a dedicated rate component, determined in the applicable electric rate settlement agreement and as verified by the commission in accordance with that settlement agreement, interest associated with that net undercollected amount or other amount, and the reasonable costs of providing, recovering, financing, or refinancing qualified costs through a financing order. Rate reduction bonds or other evidences of indebtedness or ownership issued to finance recovery of qualified costs would be referred to as "rate stabilization bonds."~~

~~Under the bill, "settlement agreement" is defined as a memorandum of understanding entered into prior to December 15, 2001, by an electrical corporation and the department setting forth a plan for (1) the acquisition of certain transmission facilities by the state, (2) the stipulated judgment, dismissal, or release of any litigation or claim that electrical corporation may have or could have had against the state, the federal government, or the commission for takings or under the filed rate doctrine arising from or related to the facts asserted in that litigation or, in the case of any electrical corporation that has not commenced litigation, which could be asserted in litigation, (3) the dedication of generation assets or interest therein owned by the electrical corporation for the benefit of California ratepayers, and (4) if the electrical corporation owns watershed lands in the Sierra Nevada mountains, for~~

~~the transfer by the electrical corporation to the state of either ownership of, or conservation easements with respect to, watershed lands owned by that electrical corporation associated with hydroelectric generating facilities owned by that electric corporation on the effective date of that memorandum of understanding.~~

~~The bill would require customers to continue to pay dedicated rate components in accordance with the financing orders until the electrical corporation has recovered the qualified costs set forth in the financing orders and, if rate stabilization bonds have been issued, until those bonds are paid in full by the financing entity. Because a violation of the Public Utilities Act is a crime, this bill, by imposing new requirements on customers, would change the definition of a crime, thereby imposing a state-mandated local program.~~

~~The bill would make corresponding changes to existing law.~~

~~(8) Existing law relating to the imposition of a sales tax excludes electrical transmission lines from the definition of “tangible personal property.”~~

~~This bill would also exclude any other property that may be sold or transferred by an electrical corporation to the department or any other state agency or authority pursuant to a settlement agreement. The bill would prohibit any conveyance of tangible personal property by an electrical corporation to the department or any other state agency or authority pursuant to a settlement agreement from constituting the sale of tangible personal property.~~

~~(9) Existing law authorizes the department to enter into contracts for the purchase of electric power. Existing law authorizes the department to sell power to retail end-use customers and, with specified exceptions, to local publicly owned electric utilities at not more than the department’s acquisition costs. Existing law authorizes the department to issue revenue bonds for those purposes.~~

~~This bill would authorize the department to acquire, if the Director of Finance determines that certain conditions have occurred, or construct any transmission facilities, to maintain and operate any transmission facilities, or to dispose of all or any portion of any transmission facilities or of the capacity or output of any transmission facilities. The bill would also authorize the department to incur indebtedness and issue revenue bonds for the purposes of paying the costs of transmission facilities and reimbursing expenditures from the fund for those purposes, renewing or refunding other bonds, and for any other purpose of the department authorized by the bill. The bill would~~



~~authorize the department to pay or provide for the payment of all costs of transmission facilities not funded from the proceeds of bonds. The bill would authorize the department to acquire property through the exercise of the power of eminent domain.~~

~~The bill, except as specified, would authorize the department to fix, establish, revise, charge, receive, and collect, either directly or through an agent, tariffs, rates, and charges for capacity and output and other use of transmission facilities. The bill would require the commission, to the extent that the department advises the commission that a portion of the department's revenue requirements are to be collected directly from retail end-use customers, to fix, establish, and revise tariffs, rates, and charges payable by the related retail end-use customers to recover in full the tariffs, rates, and charges for the use of transmission facilities, or the capacity and output thereof, by or for the benefit of, those retail end-use customers.~~

~~The bill would establish in the State Treasury the Department of Water Resources Electric Transmission Fund, the moneys in which would be continuously appropriated to the department for expenditure for the purposes of the bill. The bill would require all revenues payable to the department under the bill to be deposited in the fund.~~

~~The bill would require the department to prepare and submit to the Governor and the Legislature annual reports regarding its activities and expenditures pursuant to the bill.~~

~~(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority  $\frac{2}{3}$ . Appropriation: yes-no. Fiscal committee: yes. State-mandated local program: yes.~~

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1.—This act shall be known, and may be cited, as the~~
- 2 ~~SECTION 1. The Legislature finds and declares all of the~~
- 3 ~~following:~~
- 4 ~~(a) The wholesale electricity market in California is grossly~~
- 5 ~~dysfunctional, characterized by an abuse of seller market power~~



1 *that has resulted in unjust and unreasonable wholesale prices for*  
2 *electricity.*

3 *(b) As a result of the state's dysfunctional wholesale market,*  
4 *residential and business consumers have endured the largest*  
5 *single retail rate increase in the state's history, the state's largest*  
6 *electrical corporation is bankrupt, a second electrical corporation*  
7 *is on the verge of insolvency, and reliable electricity service has*  
8 *been jeopardized.*

9 *(c) Regulatory jurisdiction to ensure just and reasonable*  
10 *wholesale prices rests wholly with the Federal Energy Regulatory*  
11 *Commission (FERC).*

12 *(d) Although state policymakers, including state and federal*  
13 *legislative leaders, the Governor, and governors of other western*  
14 *states, have requested FERC to impose regional price caps to*  
15 *achieve just and reasonable wholesale prices, FERC has refused*  
16 *to do so.*

17 *(e) The current financial condition of the electrical*  
18 *corporations doing business in this state, and the unstable*  
19 *condition of the electric utility market in California is*  
20 *unsustainable.*

21 *(f) It is in the state's interest to have functional creditworthy*  
22 *utilities providing essential electricity service to California*  
23 *consumers at just and reasonable rates.*

24 *(g) The burden of assuring a utility's creditworthiness should*  
25 *not be borne by the state's ratepayers alone, but should be*  
26 *achieved through contributions from the utility, its parent*  
27 *company, creditors, and ratepayers.*

28 *(h) For making a substantial contribution toward making a*  
29 *utility a creditworthy entity, ratepayers should receive tangible*  
30 *benefits equivalent to the value of their contribution in making a*  
31 *utility creditworthy.*

32 *(i) It is the intent of the Legislature, through the enactment of*  
33 *the act adding this section, to set the conditions under which an*  
34 *electrical corporation may become creditworthy and meet its*  
35 *obligations to serve consumers with reliable electricity service at*  
36 *just and reasonable rates.*

37 *SEC. 2. Section 330 of the Public Utilities Code is repealed.*

38 ~~330. In order to provide guidance in carrying out this chapter,~~  
39 ~~the Legislature finds and declares all of the following:~~

~~(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.~~

~~(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars (\$23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.~~

~~(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.~~

~~(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.~~

~~(e) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market participants, and will permit the reduction of costly regulatory oversight.~~

~~(f) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.~~

~~(g) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.~~

~~(h) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.~~

~~(i) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems. To continue and enhance the reliability of the delivery of electricity, the Independent System Operator and the commission, respectively, should set inspection, maintenance, repair, and replacement standards.~~

~~(j) It is the intent of the Legislature that California enter into a compact with western region states. That compact should require the publicly and investor-owned utilities located in those states, that sell energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.~~

~~(k) In order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to do all of the following:~~

~~(1) Separate monopoly utility transmission functions from competitive generation functions, through development of independent, third-party control of transmission access and pricing.~~

~~(2) Permit all customers to choose from among competing suppliers of electric power.~~

~~(3) Provide customers and suppliers with open, nondiscriminatory, and comparable access to transmission and distribution services.~~

~~(l) The commission has properly concluded that:~~

~~(1) This competition will best be introduced by the creation of an Independent System Operator and an independent Power Exchange.~~

~~(2) Generation of electricity should be open to competition.~~

~~(3) There is a need to ensure that no participant in these new market institutions has the ability to exercise significant market power so that operation of the new market institutions would be distorted.~~

~~(4) These new market institutions should commence simultaneously with the phase in of customer choice, and the public will be best served if these institutions and the nonbypassable transition cost recovery mechanism referred to in~~

1 subdivisions (s) to (w), inclusive, are in place simultaneously and  
2 no later than January 1, 1998.

3 ~~(m) It is the intention of the Legislature that California's~~  
4 ~~publicly owned electric utilities and investor-owned electric~~  
5 ~~utilities should commit control of their transmission facilities to~~  
6 ~~the Independent System Operator. These utilities should jointly~~  
7 ~~advocate to the Federal Energy Regulatory Commission a pricing~~  
8 ~~methodology for the Independent System Operator that results in~~  
9 ~~an equitable return on capital investment in transmission facilities~~  
10 ~~for all Independent System Operator participants.~~

11 ~~(n) Opportunities to acquire electric power in the competitive~~  
12 ~~market must be available to California consumers as soon as~~  
13 ~~practicable, but no later than January 1, 1998, so that all customers~~  
14 ~~can share in the benefits of competition.~~

15 ~~(o) Under the existing regulatory framework, California's~~  
16 ~~electrical corporations were granted franchise rights to provide~~  
17 ~~electricity to consumers in their service territories.~~

18 ~~(p) Consistent with federal and state policies, California~~  
19 ~~electrical corporations invested in power plants and entered into~~  
20 ~~contractual obligations in order to provide reliable electrical~~  
21 ~~service on a nondiscriminatory basis to all consumers within their~~  
22 ~~service territories who requested service.~~

23 ~~(q) The cost of these investments and contractual obligations~~  
24 ~~are currently being recovered in electricity rates charged by~~  
25 ~~electrical corporations to their consumers.~~

26 ~~(r) Transmission and distribution of electric power remain~~  
27 ~~essential services imbued with the public interest that are provided~~  
28 ~~over facilities owned and maintained by the state's electrical~~  
29 ~~corporations.~~

30 ~~(s) It is proper to allow electrical corporations an opportunity~~  
31 ~~to continue to recover, over a reasonable transition period, those~~  
32 ~~costs and categories of costs for generation-related assets and~~  
33 ~~obligations, including costs associated with any subsequent~~  
34 ~~renegotiation or buyout of existing generation-related contracts;~~  
35 ~~that the commission, prior to December 20, 1995, had authorized~~  
36 ~~for collection in rates and that may not be recoverable in market~~  
37 ~~prices in a competitive generation market, and appropriate~~  
38 ~~additions incurred after December 20, 1995, for capital additions~~  
39 ~~to generating facilities existing as of December 20, 1995, that the~~  
40 ~~commission determines are reasonable and should be recovered;~~

provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets.

(t) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation related assets and obligations, and be completed as expeditiously as possible.

(u) The transition to expanded customer choice, competitive markets, and performance based ratemaking as described in Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.

(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:

(1) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.

(2) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the firewall and rate freeze principles are not violated.

~~(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.~~

~~(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.~~

*SEC. 3. Section 330 is added to the Public Utilities Code, to read:*

*330. (a) The Legislature finds and declares all of the following:*

*(1) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.*

*(2) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.*

*(3) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.*

*(4) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems.*

*(5) The people of California expect the utilities and the government of the state to assure safe and reliable electric service at a just and reasonable price.*

(6) *The decision of the California Public Utilities Commission in Decision 95-12-063, modified by Decision 96-01-009, to diminish the obligation of regulated electric utilities to serve their California customers with electric energy has severely harmed both the customers and the utilities.*

(7) *As the direct result of that policy, utilities divested themselves of facilities essential to their ability to meet their obligation to serve, including sales of electric generation facilities to third parties, and transfer of operational control of transmission facilities to the Independent System Operator (ISO), an entity subject to dual control by state and federal authorities.*

(8) *As the direct result of that policy, utilities have been unable to fully serve their customers with electric energy, and have been required to acquire electric energy through purchases in wholesale markets.*

(9) *As the direct result of that policy, utilities and California authorities have been unable to maintain electric service stability or reliability.*

(10) *Wholesale electricity markets have been characterized by the existence of seller market power; and will continue to be characterized in the future by seller market power; until state and federal authorities act cooperatively to eliminate that market power.*

(11) *The scope and scale of seller market power have increased with the utility divestiture of powerplants and transfer of operational control of the transmission system to the ISO, as has the cost to utilities and their retail customers.*

(12) *Prices for electric energy sold for resale, which are under the jurisdiction of the federal government, have not been just and reasonable since May 1, 2000, due to the existence and exercise of seller market power.*

(13) *Between May 1, 2000, and May 1, 2001, California utilities and their retail customers have paid least \$8.9 billion in excess cost due to seller market power.*

(14) *The wholesale electricity market institutions created by the commission in D. 95-12-063, and envisioned by Assembly Bill 1890 have collapsed, with the result that there is no transparent day ahead or hour ahead market and no pricing transparency in wholesale markets at the present time or for the foreseeable future. Specifically:*



1     (A) *The Power Exchange as envisioned by Assembly Bill 1890*  
2 *is defunct.*

3     (B) *The utilities as load serving entities are unable to*  
4 *participate in the wholesale markets because sellers do not*  
5 *consider them creditworthy.*

6     (C) *The state through the Department of Water Resources*  
7 *(DWR) has been forced to purchase electric energy in place of the*  
8 *utilities, in a manner characterized by extreme secrecy intended to*  
9 *reduce collusion and fraud by wholesale sellers.*

10    (D) *The ISO has become a significant buyer of last resort*  
11 *through out of market purchases for energy when the utilities and*  
12 *the DWR refuse to pay excessive prices, or when sellers withhold*  
13 *energy from forward markets through failures to bid.*

14    (15) *The existence of seller market power in the California*  
15 *wholesale electric markets affecting California has been formally*  
16 *found and determined by the Federal Energy Regulatory*  
17 *Commission (FERC).*

18    (16) *Federal authorities have been unwilling to take effective*  
19 *action to relieve wholesale prices or mitigate seller market power,*  
20 *contrary to their legal obligation.*

21    (17) *In order to restore the credit and operational capability of*  
22 *the utilities and to enable the DWR to make purchases at*  
23 *market-power driven prices, the commission has increased retail*  
24 *electric rates by an annual amount of over \$7 billion since January*  
25 *4, 2001, so that electric rates in California are among the highest*  
26 *in the nation.*

27    (18) *Since January 2001, California has been beset by actual*  
28 *and threatened blackouts due to supply withholding by wholesale*  
29 *sellers, who use both direct and indirect means to make electric*  
30 *energy unavailable.*

31    (19) *The reduction in reliability is directly related to the faulty,*  
32 *now partially collapsed market structure and institutions created*  
33 *by the commission Decision 95-12-063, and as codified by*  
34 *Assembly Bill 1890.*

35    (20) *The state has a duty to its people to assure the reliability*  
36 *of the electricity supply system, which has been undermined by the*  
37 *orders of the Public Utilities Commission in Decision 95-12-063.*

38    (21) *The expectations and assumptions that the policy changes*  
39 *embodied in Assembly Bill 1890 would result in consumer benefits,*

enhanced reliability, lower rates and technological innovation have proven illusory.

(22) Many owners of powerplants located within the California ISO control area are not required to consider the local need for power before purporting to schedule their supplies for export to other control areas. Most generators in other control areas throughout the Western Interconnection are controlled by vertically-integrated utilities with an obligation to assure adequate service to the customers within their respective service territories.

(23) It is essential to the public health, safety and welfare of the people of the state that the California ISO have control over the unit commitment and dispatch of powerplants located within the ISO control area in order to assure the provision of reliable service to the customers located therein.

(24) Fully empowering state entities, including the commission, the utilities, the ISO and the DWR to overcome seller market power, reduce prices for electric energy and restore grid reliability is in the public interest.

(b) The purpose of this chapter is to return electrical corporations to creditworthiness in order to enable them to invest in generation and procure energy. The Legislature finds this purpose is in the public interest.

SEC. 4. Section 341.5 of the Public Utilities Code is amended to read:

341.5. (a) The Independent System Operator and Power Exchange bylaws shall contain provisions that identify those matters specified in subdivision (b) of Section 339 as matters within state jurisdiction. The bylaws shall also contain provisions which state that California's bylaws approval function with respect to the matters specified in subdivision (b) of Section 339 shall not preclude the Federal Energy Regulatory Commission from taking any action *properly within its jurisdiction* necessary to address undue discrimination or other violations of the Federal Power Act (16 U.S.C.A. Sec. 791a et seq.) or to exercise any other commission responsibility under the Federal Power Act. ~~In taking any such action, the Federal Energy Regulatory Commission shall give due respect to California's jurisdictional interests in the functions of the Independent System Operator and Power Exchange and to attempt to accommodate state interests to the~~

1 ~~extent those interests are not inconsistent with the Federal Energy~~  
2 ~~Regulatory Commission's statutory responsibilities. The bylaws~~  
3 ~~shall state that any future agreement regarding the apportionment~~  
4 ~~of the Independent System Operator and Power Exchange board~~  
5 ~~appointment function among participating states associated with~~  
6 ~~the expansion of the Independent System Operator and Power~~  
7 ~~Exchange into multistate entities shall be filed with the Federal~~  
8 ~~Energy Regulatory Commission pursuant to Section 205 of the~~  
9 ~~Federal Power Act (16 U.S.C.A. Sec. 824d).~~

10 (b) Any necessary bylaw changes to implement the provisions  
11 of Section 335, 337, 338, 339, or subdivision (a) of this section,  
12 or changes required pursuant to an agreement as contemplated by  
13 subdivision (a) of this section with a participating state for a  
14 regional organization, shall be effective upon approval of the  
15 respective governing boards and the Oversight Board and  
16 acceptance for filing by the Federal Energy Regulatory  
17 Commission.

18 *SEC. 5. Article 4 (commencing with Section 355) of Chapter*  
19 *2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.*

20 *SEC. 6. Section 359 of the Public Utilities Code is amended*  
21 *to read:*

22 359. (a) It is the intent of the Legislature to ~~provide for the~~  
23 ~~evolution of the Independent System Operator and the Power~~  
24 ~~Exchange into regional organizations to promote the development~~  
25 ~~of regional electricity transmission markets improve reliability, to~~  
26 ~~support mutual assistance among load serving entities, to achieve~~  
27 ~~equitable pricing policies in the western states, and to improve the~~  
28 ~~access of consumers served by the Independent System Operator~~  
29 ~~and the Power Exchange to those functional and transparent~~  
30 ~~markets.~~

31 (b) The preferred means by which the ~~voluntary evolution~~  
32 ~~objectives~~ described in subdivision (a) should ~~occur~~ *be realized* is  
33 through the adoption of a regional compact or other comparable  
34 agreement among cooperating party states, ~~the retail customers of~~  
35 ~~which states would reside within the geographic territories served~~  
36 ~~by the Independent System Operator and the Power Exchange.~~

37 (c) The agreement described in subdivision (b) should provide  
38 for all of the following:

39 (1) An equitable process for the appointment or confirmation  
40 by party states of members of the governing ~~boards~~ *board* of the

~~Independent System Operator and the Power Exchange regional organization.~~

~~(2) A respecification of the size, structure, representation, eligible membership, nominating procedures, and member terms of service of the governing boards of the Independent System Operator and the Power Exchange.~~

~~(3) Mechanisms by which each party state, jointly or separately, can oversee effectively the actions of the Independent System Operator and the Power Exchange as those actions relate to the assurance of electricity system reliability within the party state and to matters that affect electricity sales to the retail customers of the party state or otherwise affect the general welfare of the electricity consumers and the general public of the party state.~~

~~(4)~~

(3) The adherence by publicly owned and investor-owned utilities located in party states to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.

*SEC. 7. Section 361 of the Public Utilities Code is repealed.*

~~361. The commission shall ensure that any funds secured by the restructuring trusts established for the purposes of developing the Independent System Operator and the Power Exchange shall be placed at the disposal of the Independent System Operator and the Power Exchange respectively.~~

*SEC. 8. Section 365.1 is added to the Public Utilities Code, to read:*

*365.1. The actions of the commission pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330.*

*SEC. 9. Section 367 of the Public Utilities Code is amended to read:*

367. The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as

1 a result of a competitive generation market, in that these costs may  
2 not be recoverable in market prices in a competitive market, and  
3 appropriate costs incurred after December 20, 1995, for capital  
4 additions to generating facilities existing as of December 20, 1995,  
5 that the commission determines are reasonable and should be  
6 recovered, provided that these additions are necessary to maintain  
7 the facilities through December 31, 2001. These uneconomic costs  
8 shall include transition costs as defined in subdivision (f) of  
9 Section 840, and shall be recovered from all customers or in the  
10 case of fixed transition amounts, from the customers specified in  
11 subdivision (a) of Section 841, on a nonbypassable basis and shall:

12 (a) Be amortized over a reasonable time period, including  
13 collection on an accelerated basis, consistent with not increasing  
14 rates for any rate schedule, contract, or tariff option above the  
15 levels in effect on June 10, 1996; provided that, the recovery shall  
16 not extend beyond December 31, 2001, except as follows:

17 (1) Costs associated with employee-related transition costs as  
18 set forth in subdivision (b) of Section 375 shall continue until fully  
19 collected; provided, however, that the cost collection shall not  
20 extend beyond December 31, 2006.

21 (2) Power purchase contract obligations shall continue for the  
22 duration of the contract. Costs associated with any buy-out,  
23 buy-down, or renegotiation of the contracts shall continue to be  
24 collected for the duration of any agreement governing the buy-out,  
25 buy-down, or renegotiated contract; provided, however, no power  
26 purchase contract shall be extended as a result of the buy-out,  
27 buy-down, or renegotiation.

28 (3) Costs associated with contracts approved by the  
29 commission to settle issues associated with the Biennial Resource  
30 Plan Update may be collected through March 31, 2002; provided  
31 that only 80 percent of the balance of the costs remaining after  
32 December 31, 2001, shall be eligible for recovery.

33 (4) Nuclear incremental cost incentive plans for the San Onofre  
34 nuclear generating station shall continue for the full term as  
35 authorized by the commission in Decision 96-01-011 and Decision  
36 96-04-059; provided that the recovery shall not extend beyond  
37 December 31, 2003.

38 (5) Costs associated with the exemptions provided in  
39 subdivision (a) of Section 374 may be collected through March 31,  
40 2002, provided that only fifty million dollars (\$50,000,000) of the

balance of the costs remaining after December 31, 2001, shall be eligible for recovery.

(6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.

(b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.

(c) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the additions are necessary to maintain the facilities through December 31, 2001. All "going forward costs" of fossil plant operation, including operation and maintenance, administrative and general, fuel and fuel transportation costs, shall be recovered solely from independent Power Exchange revenues or from contracts with the Independent System Operator, provided that for the purposes of this chapter, the following costs may be recoverable pursuant to this section:

(1) Commission-approved operating costs for particular utility-owned fossil powerplants or units, at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is deemed needed for the reactive power/voltage support by the Independent System Operator, provided that the units are otherwise authorized to



1 recover market-based rates and provided further that for an  
2 electrical corporation that is also a gas corporation and that serves  
3 at least four million customers as of December 20, 1995, the  
4 commission shall allow the electrical corporation to retain any  
5 earnings from operations of the reactive power/voltage support  
6 plants or units and shall not require the utility to apply any portions  
7 to offset recovery of transition costs. Cost recovery under the cost  
8 recovery mechanism shall end on December 31, 2001.

9 (2) An electrical corporation that, as of December 20, 1995,  
10 served at least four million customers, and that was also a gas  
11 corporation that served less than four thousand customers, may  
12 recover, pursuant to this section, 100 percent of the uneconomic  
13 portion of the fixed costs paid under fuel and fuel transportation  
14 contracts that were executed prior to December 20, 1995, and were  
15 subsequently determined to be reasonable by the commission, or  
16 100 percent of the buy-down or buy-out costs associated with the  
17 contracts to the extent the costs are determined to be reasonable by  
18 the commission.

19 (d) Be adjusted throughout the period through March 31, 2002,  
20 to track accrual and recovery of costs provided for in this  
21 subdivision. Recovery of costs prior to December 31, 2001, shall  
22 include a return as provided for in Decision 95-12-063, as  
23 modified by Decision 96-01-009, together with associated taxes.

24 (e) (1) Be allocated among the various classes of customers,  
25 rate schedules, and tariff options to ensure that costs are recovered  
26 from these classes, rate schedules, contract rates, and tariff  
27 options, including self-generation deferral, interruptible, and  
28 standby rate options in substantially the same proportion as similar  
29 costs are recovered as of June 10, 1996, through the regulated retail  
30 rates of the relevant electric utility, provided that there shall be a  
31 firewall segregating the recovery of the costs of competition  
32 transition charge exemptions such that the costs of competition  
33 transition charge exemptions granted to members of the combined  
34 class of residential and small commercial customers shall be  
35 recovered only from these customers, and the costs of competition  
36 transition charge exemptions granted to members of the combined  
37 class of customers, other than residential and small commercial  
38 customers, shall be recovered only from these customers.

39 (2) Individual customers shall not experience rate increases as  
40 a result of the allocation of transition costs. However, customers



who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

(3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.

(f) *The provisions of this section shall be repealed as of January 1, 2002.*

*SEC. 10. Section 379 of the Public Utilities Code is amended to read:*

379. Nuclear decommissioning costs ~~shall not be part of the costs described in Sections 367, 368, 375, and 376, but~~ shall be recovered as a nonbypassable charge until the time as the costs are fully recovered. ~~Recovery The commission may accelerate the recovery of decommissioning costs may be accelerated to the extent possible~~ *consistent with the public interest.*

*SEC. 11. Article 16 (commencing with Section 399.20) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:*

#### *Article 16. Electricity Market Stabilization*

399.20. *For the purposes of this article, the following terms shall have the following meanings:*

(a) (1) “Electrical corporation debt repayment set-aside” means a nonbypassable rate and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to allow the electrical corporation to recover all or any portion of both (A) qualified costs, and (B) the costs of providing, recovering, financing, or refinancing the qualified costs through a plan approved by the commission in the financing order, including, but not limited to, the costs of issuing, servicing and retiring electricity market stabilization bonds. *For the purposes of this article, an electrical corporation debt repayment set-aside shall be imposed on a nonbypassable basis at a uniform rate per kilowatthour of electricity consumed pursuant to Section 399.25.*

1 (2) *If requested by the electrical corporation in its application*  
2 *for a financing order, an electrical corporation debt repayment*  
3 *set-aside shall include nonbypassable rates and other charges to*  
4 *recover federal and state taxes whose recovery period is modified*  
5 *by the transactions approved in the financing order.*

6 (b) *“Electricity market stabilization bonds” means bonds,*  
7 *notes, certificates of participation or beneficial interest, or other*  
8 *evidences of indebtedness or ownership, issued pursuant to an*  
9 *executed indenture or other agreement of a financing entity, the*  
10 *proceeds of which are used, directly or indirectly, to provide,*  
11 *recover, finance, or refinance qualified costs, and that are directly*  
12 *or indirectly secured by, or payable from, transition property.*

13 (c) *“Financing entity” means an electrical corporation or any*  
14 *entity designated by the electrical corporation to issue electricity*  
15 *market stabilization bonds pursuant to this article.*

16 (d) *“Financing order” means an order of the commission*  
17 *adopted in accordance with this article approving an electrical*  
18 *corporation debt repayment set-aside. A financing order shall*  
19 *include, without limitation, a procedure for the expeditious*  
20 *approval by the commission of periodic adjustments to the*  
21 *electrical corporation debt repayment set-aside included therein*  
22 *to ensure recovery of the qualified costs and the costs of issuing,*  
23 *servicing, refinancing, and retiring the electricity market*  
24 *stabilization bonds approved by the financing order.*

25 (e) *“Net undercollected costs” means the difference between*  
26 *the cost of the energy provided by the electrical corporation and*  
27 *the energy related revenues received by the electrical corporation*  
28 *from retail customers from May 1, 2000 to January 18, 2001,*  
29 *inclusive.*

30 (f) *“Qualified costs” means, with respect to an electrical*  
31 *corporation, all of the following:*

32 (1) *The net undercollected costs in the amount determined*  
33 *pursuant to Section 399.22.*

34 (2) *Interest associated with the net undercollected costs prior*  
35 *to the issuance of bonds as determined pursuant to Section 399.22.*

36 (g) *Notwithstanding any other provision of law an electrical*  
37 *corporation may not recover more than two billion five hundred*  
38 *million dollars (\$2,500,000,000) of qualified costs.*

39 (h) (1) *“Stabilization property” means the property right*  
40 *created pursuant to this article including, without limitation, the*

1 right, title, and interest of an electrical corporation or its  
2 transferee:

3 (A) In and to the tariff established pursuant to a financing  
4 order, as adjusted from time to time in accordance with the  
5 financing order, and to all revenues, collections, claims, payments,  
6 monies, or proceeds of or arising from the tariff.

7 (B) To be paid the amount that is determined in a financing  
8 order to be the amount that the electrical corporation or its  
9 transferee is lawfully entitled to receive pursuant to the provisions  
10 of this article.

11 (C) In and to all revenues, collections, claims, payments,  
12 monies, or proceeds of or arising from an electrical corporation  
13 debt repayment set-aside that is the subject of a financing order.

14 (D) To the nonbypassable rates and other charges referred to  
15 in subdivision (a) imposed pursuant to a financing order.

16 (E) In and to all rights to obtain adjustments to the tariff  
17 pursuant to the terms of the financing order.

18 (2) “Stabilization property” shall constitute a current property  
19 right notwithstanding the fact that the value of the property right  
20 will depend on consumers using electricity or, in those instances  
21 where consumers are customers of a particular electrical  
22 corporation, the electrical corporation performing certain  
23 services.

24 (3) Stabilization property shall have all of the characteristics  
25 of and be subject to all the provisions governing transition  
26 property as set forth in Sections 842, 843, 844, and 845.

27 399.21. (a) Electricity market stabilization bonds pursuant  
28 to this article may only be issued by an electrical corporation  
29 serving more than 4,000,000 customers which is also a gas  
30 corporation serving fewer than 5000 customers. To issue  
31 electricity market stabilization bonds the electrical corporation  
32 shall submit to the commission an application to issue electricity  
33 market stabilization bonds in an amount necessary to recover  
34 qualified costs. No electricity market stabilization bonds may be  
35 issued without commission approval.

36 (b) The commission shall approve the application (1) upon  
37 verification of the qualified costs pursuant to Section 399.22, and  
38 (2) upon determination that the electrical corporation and its  
39 holding company have entered into a binding and enforceable  
40 agreement with the state in which, at a minimum, the electrical

1 corporation and its holding company agree to and perform all of  
2 the following:

3 (1) Sell to retail end-use customers all electricity generated by  
4 assets owned by the electrical corporation and at cost-based rates  
5 as determined by the commission.

6 (2) Apply the proceeds of the electricity market stabilization  
7 bonds, after payment of issuance costs, in accordance with the  
8 intent of subdivision (c).

9 (3) Provide the Department of Water Resources or its designee  
10 with the entire output from the Sunrise generating facility for a  
11 term of not less than 10 years at cost-of-service based rates as  
12 determined by the commission. Terms and conditions of the  
13 agreement shall be set forth in a contract executed between the  
14 electrical corporation and its holding company, and the  
15 Department of Water Resources or its designee.

16 (4) Convey electrical corporation-owned land to the state  
17 pursuant to Article 17 (commencing with Section 399.30).

18 (5) Dismiss, with prejudice, any and all legal claims the  
19 electrical corporation and its holding company may have or  
20 relinquish any legal claim the electrical corporation and its  
21 holding company could have had against the State of California  
22 or any agency, department or subdivision thereof, the federal  
23 Government, or the commission for a taking or a violation of the  
24 filed rate doctrine arising from or related to the facts asserted in  
25 the litigation; and any claims challenging actions taken by the  
26 commission, or actions that the commission failed to take, to  
27 implement Assembly Bill 1 of the 2001–02 First Extraordinary  
28 Session (Ch. 4, Stats. 2001–02 1st Ex. Sess.) and Assembly Bill 6  
29 of the First Extraordinary Session (Ch. 2, Stats. 2001–02 1st Ex.  
30 Sess.).

31 (6) Resume procurement of the full net short needs and electric  
32 requirements for retail customers within the electrical  
33 corporation's service area as soon as the company is deemed  
34 creditworthy or January 1, 2003, whichever occurs sooner.

35 (7) Relinquish all claims against the state for commandeering  
36 the electrical corporation's block forward market contracts  
37 purchased through the California Power Exchange.

38 (8) Provide the state with an irrevocable option for a period of  
39 not less than five years to purchase the transmission facilities

1 owned by the electrical corporation at the net book value of those  
2 facilities.

3 (9) Apply four hundred million dollars (\$400,000,000),  
4 consisting of the tax refund of the estimated quarterly tax payments  
5 for the 2000 taxable year and an additional amount equal to the  
6 federal loss carryback that the electrical corporation would have  
7 had if it were not part of its holding company's consolidated group  
8 of taxpayers, to the reduction or elimination of the past debt of the  
9 electrical corporation in order to restore the creditworthiness of  
10 the electrical corporation by the earliest feasible date.

11 (c) It is the intent of the Legislature in authorizing the issuance  
12 of a financing order pursuant to this article that any revenues  
13 derived from the issuance of electricity market stabilization bonds  
14 for the amount authorized pursuant to this article shall be  
15 expended for the following purposes:

16 (1) Not more than \$1.2 billion for payment by the electrical  
17 corporation to banks or other lending institutions for outstanding  
18 debt consisting of notes, commercial paper, or other evidence of  
19 indebtedness.

20 (2) Not more than \$1.3 billion for payment to qualifying  
21 facilities for electricity sold to the electrical corporation by those  
22 facilities.

23 (d) It is the intent of the Legislature that disposition of any debt  
24 or charges imposed on the electrical corporation by the power  
25 exchange, by the Independent System Operator, or by any  
26 electrical generator other than a qualifying facility for energy  
27 purchased on or before January 31, 2001, shall be the  
28 responsibility of the electrical corporation and its holding  
29 company and shall not be the responsibility of ratepayers.

30 (e) The binding and enforceable agreement in subdivision (b)  
31 shall be enforceable by the commission in proceedings.

32 399.22. This section shall apply to all electrical corporations  
33 subject to Section 399.21.

34 (a) The commission shall verify for an electrical corporation  
35 the amount of the qualified costs and other amounts permitted to  
36 be recovered through an electrical corporation debt repayment  
37 set-aside within 60 days of the date of submission of the amount to  
38 be verified. The commission review may only be for the purpose of  
39 verifying recorded amounts and making any adjustments resulting  
40 from that verification. Notwithstanding any other provision of law,

1 *qualified costs and other amounts permitted to be recovered*  
2 *through an electrical corporation debt repayment set-aside shall*  
3 *be recoverable in accordance with this article.*

4 *(b) (1) Notwithstanding any other provision of law, the*  
5 *commission shall establish, within 60 days of the filing of an*  
6 *application of an electrical corporation, an electrical corporation*  
7 *debt repayment set-aside designed to enable the electrical*  
8 *corporation to recover the qualified costs described in the*  
9 *application over an amortization period to be determined*  
10 *consistent with this article.*

11 *(2) The electrical corporation debt reduction set-aside shall be*  
12 *established by the adoption of a financing order as set forth in this*  
13 *section. The commission shall establish an electrical corporation*  
14 *debt reduction set-aside sufficient to enable the electrical*  
15 *corporation to recover the full amount of its qualified costs set*  
16 *forth in the financing order.*

17 *(3) Customers, as specified in Section 399.25, shall continue to*  
18 *pay the electrical corporation debt reduction set-aside in*  
19 *accordance with the financing order until the electrical*  
20 *corporation has recovered the qualified costs set forth in the*  
21 *financing order and, if electricity market stabilization bonds have*  
22 *been issued in connection therewith, until those bonds are paid in*  
23 *full by the financing entity.*

24 *(c) The commission shall issue a financing order in accordance*  
25 *with this article to facilitate the provision, recovery, financing, or*  
26 *refinancing of qualified costs. A financing order shall be adopted*  
27 *only upon the application of an electrical corporation and shall*  
28 *become effective in accordance with its terms only after the*  
29 *electrical corporation files with the commission the electrical*  
30 *corporation's written notice of intent to comply with all terms and*  
31 *conditions of the financing order. A financing order shall specify*  
32 *the conditions to the implementation of the terms of that financing*  
33 *order. Notwithstanding Section 1756, Section 1759, or any other*  
34 *provision of law, no court, except the Supreme Court, has*  
35 *jurisdiction to review, reverse, correct, or annul any financing*  
36 *order, or to suspend or delay the execution or operations thereof,*  
37 *or to enjoin, restrain, or interfere with the commission in the*  
38 *performance of its official duties in respect thereof, as provided by*  
39 *law and the rules of the court.*



1 (d) Notwithstanding Section 455.5, Section 1708, or any other  
2 provision of law, except as otherwise provided in this subdivision,  
3 the financing orders and the electrical corporation debt repayment  
4 set-aside shall, upon the effectiveness of the financing orders, be  
5 irrevocable and the commission may not have authority either by  
6 rescinding, altering, or amending the financing order or  
7 otherwise, to revalue or revise for ratemaking purposes the  
8 qualified costs, or the costs of providing, recovering, financing, or  
9 refinancing the qualified costs, determine that the electrical  
10 corporation debt repayment set-aside is unjust or unreasonable, or  
11 in any way reduce or impair the value of stabilization property  
12 either directly or indirectly by taking the electrical corporation  
13 debt repayment set-aside into account when setting other rates for  
14 the electrical corporation; nor shall the amount of revenues  
15 arising with respect thereto be subject to reduction, impairment,  
16 postponement, or termination. Except as otherwise provided in  
17 this paragraph, the state does hereby pledge and agree with the  
18 electrical corporation, the owners of stabilization property, and  
19 holders of electricity market stabilization bonds that the state shall  
20 neither limit nor alter the electrical corporation debt repayment  
21 set-aside, stabilization property, financing orders, and all rights  
22 thereunder until the electrical corporation has recovered all  
23 qualified costs, and if electricity market stabilization bonds have  
24 been issued in connection therewith, obligations under those  
25 bonds, together with the interest thereon, are fully met and  
26 discharged, provided that nothing contained in this section shall  
27 preclude the limitation or alteration of these matters if adequate  
28 provision is made by law for the protection of the owners and  
29 holders. That pledge shall be deemed to be part of a financing  
30 order upon adoption thereof by the commission. Notwithstanding  
31 any other provision of this section, the commission shall approve  
32 the adjustments to the electrical corporation debt repayment  
33 set-aside as it determines to be necessary to ensure timely recovery  
34 of all qualified costs that are the subject of the pertinent financing  
35 order, and the cost of capital associated with the provision,  
36 recovery, financing, or refinancing thereof, including the cost of  
37 issuing, servicing, and retiring any electricity market stabilization  
38 bonds issued to finance qualified costs contemplated by the  
39 financing order.



1 (e) The commission shall establish procedures for the  
2 expeditious processing of applications for financing orders,  
3 including the approval or disapproval thereof within 60 days of the  
4 electrical corporation's making application therefor.

5 (f) The electrical corporation debt repayment set-side shall  
6 constitute stabilization property when, and to the extent that, a  
7 financing order authorizing the electrical corporation debt  
8 repayment set-aside has become effective in accordance with this  
9 article, and the stabilization property shall thereafter continuously  
10 exist as property for all purposes with all of the rights and  
11 privileges of this article for the period and to the extent provided  
12 in the financing order, but in any event until (1) the electrical  
13 corporation has recovered the qualified costs and (2) the  
14 electricity market stabilization bonds are paid in full, including all  
15 principal, interest, premium, costs, and arrearages thereon.

16 399.23. With respect to an electrical corporation debt  
17 repayment set-aside relating to financing orders providing for  
18 recovery of qualified costs, the obligation of the electrical  
19 corporation to collect and remit the electrical corporation debt  
20 repayment set-aside consistent with a financing order shall  
21 continue irrespective of whether that electrical corporation is  
22 providing electric power or other services to the retail customers  
23 obligated to pay the electrical corporation repayment set-aside.

24 399.24. The authority of the commission to issue financing  
25 orders providing for recovery of qualified costs shall expire on  
26 December 15, 2006. The expiration of the authority shall have no  
27 effect upon financing orders adopted by the commission pursuant  
28 to this article or any stabilization property arising therefrom, or  
29 upon the charges authorized to be levied thereunder, or the rights,  
30 interests, and obligations of the electrical corporation or a  
31 financing entity or holders of electricity market stabilization bonds  
32 pursuant to the financing order, or the authority of the commission  
33 to monitor, supervise, or take further action with respect to the  
34 order in accordance with the terms of this article and of the order.

35 399.25. The electrical corporation debt repayment set-aside  
36 established by order of the commission pursuant to this article  
37 shall be paid exclusively by customers with electric loads  
38 exceeding 125 kilowatt billing demand.

39 399.26. If an electrical corporation and its holding company  
40 enter into a binding and enforceable agreement pursuant to

subdivision (b) of Section 399.21, and the commission issues an order approving it pursuant to subdivision (e) of Section 399.21, the commission may not require any other financial contribution from the holding company, nor impose any penalty on the holding company for violation of the first priority condition contained in Commission Decision number D-88-01-063, for events occurring on or before January 18, 2001.

SEC. 12. Article 17 (commencing with Section 399.30) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 17. Conservation Lands

399.30. (a) An electrical corporation authorized to recover qualified costs pursuant to Article 16 (commencing with Section 399.20) shall transfer to the state or to a trust specified in subdivision (b) its complete interest, as of the effective date of this section, in the lands identified in this subdivision. Lands to be transferred, if not identified by legal description or the assessor's parcel number, shall contain sufficient information regarding the nature, general location, scope, and extent of the real property, fixtures, improvements, or facilities that would place third parties on inquiry notice of the right, title, or interest claimed by the state or its subdivisions or creations, by reason of the deed, assignment, or other instrument of conveyance. The lands identified in this subdivision shall be conveyed in fee, except that conservation easements shall be transferred on lands that are subject to licensure by the Federal Energy Regulatory Commission and that are producing electricity as of the effective date of the act adding this section, and all other interests in watershed, inland, forest, desert, and coastal land or lands of potential conservation value owned by the electrical corporation on the effective date of the act adding this section shall be conveyed as they are held by the electrical corporation:

(1) Fresno and Madera Counties: Jackass Meadows containing approximately 280 acres, Big Creek 3 and Big Creek 4 together consisting of approximately 253 acres, Huntington Lake, consisting of approximately 815 acres, Shaver Lake consisting of approximately 21,000 acres, and unknown acreage along Dinkey Creek.

(2) Various properties in the eastern Sierra Nevada consisting of approximately 825 acres and known generically as the Lee Vining HQ property, Lundy Reservoir, Bishop Creek Canyon, Bishop Creek Powerhouses 3, 5, and 6, Owens Lake, and Rush Creek Powerhouse.

(3) Ventura County: Ormand Beach and Mandalay Beach properties, consisting of approximately 200 acres.

(4) Los Angeles County: Approximately 82 acres of the Los Angeles River floodplain, plus approximately 75 acres in the Los Angeles River corridor, and \_\_\_\_\_ acres adjacent along and near the San Gabriel River, and approximately 10 acres known as the Los Cerritos wetlands.

(5) Orange County: Approximately 20 acres known as the Huntington Beach Wetlands.

(6) Orange County: Approximately 110 acres of upland coastal sage scrub near Viejo.

(7) San Diego County: Approximately 140 acres of wetlands in the San Dieguito River Valley.

(b) At its sole option, the state may establish a trust to hold the interests in land conveyed by the electrical corporation. The state may seek the assistance of qualified nonprofit organizations referenced in Section 815.3 of the Civil Code to establish and operate the trust. The trust, if it is formed, shall hold the interests in land conveyed pursuant to subdivision (a) by the electrical corporation. If a trust is not formed, the Secretary of the Resources Agency shall designate to whom fee title or lesser interests in land shall be conveyed, held, and managed on behalf of the state.

(c) The trust, if it is formed, and acting at the direction of the Secretary of the Resources Agency, shall undertake a review process of the lands that will consider the use or uses of the lands, including the conservation, natural resource, public recreation, and public trust values of the lands, and including the possible disposition of the lands or interests in land conveyed to the state. The review process shall include formation of an advisory council, chaired by the secretary or his or her designee, that consists equally of representatives of state government, local governments, commercial interests, and conservation interests. If a trust is not formed, the secretary shall undertake the review process and appoint the advisory council as prescribed in this subdivision. State government representatives shall be appointed from among

1 *the Resources Agency, the Wildlife Conservation Board, the State*  
2 *Lands Commission, the Department of Parks and Recreation, the*  
3 *Department of Fish and Game, and the Coastal Conservancy. Ex*  
4 *officio members may be appointed at the discretion of the*  
5 *secretary.*

6 (d) *The purpose of the public review process is to ensure the*  
7 *permanent conservation of these lands for their public interest*  
8 *value, including fish, wildlife, and habitat; compatible human*  
9 *recreation; protection of open space and aesthetic values;*  
10 *preservation of historic and cultural resources; and protection of*  
11 *water quality and watershed functions. An additional objective is*  
12 *to increase management efficiency by consolidating mixed public*  
13 *and electrical corporation lands under public ownership.*

14 (e) *Notwithstanding subdivision (d), nonutility uses of the*  
15 *property existing as of the time the easement or other real property*  
16 *interest is conveyed shall be permitted to continue subject to*  
17 *certification by the Secretary of the Resources Agency that public*  
18 *trust values will obtain a net benefit. If otherwise consistent with*  
19 *existing law, utility uses, including the maintenance, repair,*  
20 *replacement, and installation of public utility infrastructure,*  
21 *including, but not limited to, water and sewer pipelines, and*  
22 *electric and telecommunication lines, existing as of the time the*  
23 *easement or other real property interest is conveyed, shall be*  
24 *permitted to continue. If otherwise consistent with existing law,*  
25 *expansion of hydroelectric utility facilities located on the property*  
26 *as of the time of conveyance to the state shall be permitted, subject*  
27 *to the approval of the state and federal agencies having*  
28 *jurisdiction over any expansion, and subject to certification by the*  
29 *secretary that public trust values will obtain a net benefit by that*  
30 *expansion.*

31 (f) *Notwithstanding subdivision (d), timber harvesting*  
32 *activities for which permits have been obtained or that are eligible*  
33 *to obtain renewed permits as of the effective date of the act that*  
34 *added this section shall be permitted on the conveyed lands,*  
35 *subject to modification based on management and disposition*  
36 *plans approved by the state. Applications for new timber harvest*  
37 *plans subsequent to that effective date shall be granted only upon*  
38 *certification by the Department of Forestry and Fire Protection*  
39 *that is approved by the Department of Fish and Game and the*  
40 *appropriate regional water control board that the activities are*

1 *accompanied by a mitigation plan that results in a net benefit to*  
2 *public trust resources.*

3 *(g) The maintenance, repair, replacement, and installation of*  
4 *public utility infrastructure, including, but not limited to, water*  
5 *and sewer pipelines, and electric and telecommunications lines for*  
6 *nonutility and other uses shall be allowed, subject to the extent*  
7 *those activities are permitted by the terms of the management and*  
8 *disposition plans approved by the state.*

9 *(h) Income derived from the conveyed lands from activities*  
10 *exclusive of hydropower generation that were authorized by the*  
11 *electrical corporation prior to the effective date of the act that*  
12 *added this section shall remain assets of the electrical corporation*  
13 *or its designees. Income derived from these lands subsequent to*  
14 *that effective date exclusive of hydropower generation shall*  
15 *remain the property of the state and shall be used to defray*  
16 *expenses associated with these property transfers.*

17 *(i) The Secretary of the Resources Agency shall certify that*  
18 *lands found to possess significant public values shall be managed*  
19 *in perpetuity by the state to maintain or enhance those values. The*  
20 *public review process shall not recommend actions that are*  
21 *inconsistent with these objectives. The state shall have the right to*  
22 *impose conditions to protect these conservation, open space,*  
23 *watershed, and public trust resources for all lands that are*  
24 *eventually transferred or otherwise disposed of by the state*  
25 *following the public review process.*

26 *(j) The state may transfer its title or possessory interests that*  
27 *ensure management in perpetuity for conservation of those public*  
28 *trust values in those lands to state, federal, or local governmental*  
29 *agencies, special districts, Indian tribes or tribal entities, or*  
30 *nonprofit organizations qualified under Section 170(h) of the*  
31 *Internal Revenue Code and Section 815.3 of the Civil Code, that*  
32 *are competent and appropriate to own or manage the lands as*  
33 *required by this section, along with sale of remaining possessory*  
34 *interest to a compatible third party.*

35 *(k) New or modified economic uses of lands found to possess*  
36 *significant public values may occur if compatible with the primary*  
37 *purpose of protection or enhancement of existing environmental*  
38 *and recreational uses.*

39 *(l) Lands not found to possess significant public values may be*  
40 *used for land exchanges to protect other lands that possess*



1 *significant public values or may be disposed of to generate income*  
2 *to acquire those other lands.*

3 *(m) Final management or disposition recommendations*  
4 *concerning the lands identified in subdivision (a) are to be made*  
5 *to the Secretary of the Resources Agency within two years of the*  
6 *effective date of the act adding this section. Pursuant to directives*  
7 *of the secretary, and with the same public process established in*  
8 *this section, periodic reviews of the management of these lands or*  
9 *interests in these lands that are transferred to the state by an*  
10 *electrical corporation, are authorized in order to assess the*  
11 *stewardship of public trust resources.*

12 *(n) Existing public access on these lands shall be maintained*  
13 *during the public review process unless a different arrangement is*  
14 *agreed upon that is separately negotiated by and between the*  
15 *electric corporation and the state.*

16 *(o) Notwithstanding any other provision of law, the electrical*  
17 *corporation shall retain legal responsibility for all environmental*  
18 *liabilities arising by operation of law based on its prior ownership*  
19 *and interest in the lands conveyed to the state. The electrical*  
20 *corporation shall indemnify and hold harmless the state or the*  
21 *trust or the state's successors and assigns against liability arising*  
22 *out of the electrical corporation's use or ownership prior to the*  
23 *transfer, whether that liability is based on ownership in fee or*  
24 *another lesser interest in the conveyed lands.*

25 *(p) The Secretary of the Resources Agency alone shall have the*  
26 *authority to transfer, encumber, or dispose of lands or interests in*  
27 *lands conveyed to the state by the electrical corporation, except*  
28 *that the secretary may designate a state agency or department with*  
29 *expertise in land ownership and conveyance transactions to be his*  
30 *or her designee.*

31 *SEC. 13. Section 454.10 is added to the Public Utilities Code,*  
32 *to read:*

33 *454.10. (a) In order to assure that the service provided by*  
34 *electrical corporations is adequate, the commission may require*  
35 *each electrical corporation that provides distribution service to*  
36 *make direct investments in electric generation facilities whose*  
37 *output is dedicated to serve the customers connected to its*  
38 *distribution grid.*

39 *(b) After a hearing, the commission shall approve rates*  
40 *sufficient to enable the electrical corporation to recover its*

1 reasonable costs of operation, its reasonable investment in the  
2 electric generation facilities and a reasonable return on its  
3 investment, in accordance with Section 451.

4 (c) An electric corporation may meet the obligation described  
5 in this section by entering into projects for electric generation  
6 facilities jointly with the California Consumer Power and  
7 Conservation Financing Authority.

8 (d) The commission may conduct proceedings, enter orders and  
9 undertake such actions as it considers necessary or appropriate to  
10 carry out the provisions of this section.

11 SEC. 14. Section 454.11 is added to the Public Utilities Code,  
12 to read:

13 454.11. In the case of an electrical corporation serving more  
14 than 4,000,000 customers which is also a gas corporation serving  
15 fewer than 5,000 customers and which has entered into a binding  
16 and enforceable agreement pursuant to subdivision (b) of Section  
17 399.21, that has been approved by the commission pursuant to  
18 subdivision (e) of Section 399.21, the commission shall not reduce,  
19 prior to January 1, 2006, the authorized rate of return on  
20 generation assets below the level approved for distribution assets  
21 in the electrical corporation's last general rate case.

22 SEC. 15. If any part of the provisions of this act, or the  
23 application thereof to any person or circumstance, is held invalid,  
24 the remainder of this act, including the application of such part or  
25 provision to other persons or circumstances, shall not be affected  
26 thereby, and this act shall otherwise continue in full force and  
27 effect and shall otherwise be fully operative. To this end, the  
28 provisions of this act, and each of them, are hereby declared to be  
29 severable.

30 SEC. 16. No reimbursement is required by this act pursuant  
31 to Section 6 of Article XIII B of the California Constitution  
32 because the only costs that may be incurred by a local agency or  
33 school district will be incurred because this act creates a new crime  
34 or infraction, eliminates a crime or infraction, or changes the  
35 penalty for a crime or infraction, within the meaning of Section  
36 17556 of the Government Code, or changes the definition of a  
37 crime within the meaning of Section 6 of Article XIII B of the  
38 California Constitution.

39 SEC. 17. This act is an urgency statute necessary for the  
40 immediate preservation of the public peace, health, or safety



1 *within the meaning of Article IV of the Constitution and shall go*  
2 *into immediate effect. The facts constituting the necessity are:*

3 *In order to allow the implementation of measures to enable the*  
4 *restoration of the economic health of California's electrical*  
5 *utilities as soon as possible and to thereby minimize disruption of*  
6 *the California economy, it is necessary that this act take effect*  
7 *immediately.*

8  
9  
10 **All matter omitted in this version of the**  
11 **bill appears in the bill as introduced in the**  
12 **Senate, May 17, 2001 (JR 11)**  
13  
14

